

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 9, 2007 Session

STEVE BIGGERS v. TRANSPORT SERVICES, INC.

Appeal from the Circuit Court for Davidson County
No. 04C-3693 Walter C. Kurtz, Judge

No. M2006-01549-COA-R3-CV - Filed on May 16, 2007

This appeal involves the termination of an independent contractor's contract to provide courier services. The independent contractor filed suit in the Circuit Court for Davidson County alleging that the employer did not have just cause to terminate the contract. After the trial court set aside a default judgment for the independent contractor, the employer filed an answer and a motion for summary judgment. Following a hearing, the trial court granted a summary judgment for the employer after concluding that the undisputed facts demonstrated that the employer had just cause to terminate the independent contractor. On this appeal, the independent contractor insists that the trial court erred by setting aside the default judgment and by determining that the employer was entitled to a judgment as a matter of law. We have determined that the undisputed facts support the trial court's conclusion that the employer was entitled to a judgment as a matter of law.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Lorraine Wade, Nashville, Tennessee, for the appellant, Steve Biggers.

Mark North, Madison, Tennessee, for the appellee, Transport Services, Inc.

MEMORANDUM OPINION¹

I.

Transport Services, Inc. is engaged in the business of providing courier services. It has offices in seven states and does business in fifteen states, including Tennessee. On March 27, 2003,

¹Tenn. Ct. App. R. 10 provides:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion, it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

it entered into a one-year “Independent Contractor Agreement” with Steve Biggers to provide courier services in the Middle Tennessee area. While there is some ambiguity regarding the subsequent renewals of this contract, the parties agree for the purpose of this appeal that the contract was renewed and was in force during the time period relevant to this appeal.

Mr. Biggers’s route consisted primarily of picking up and delivering film for processing from drug stores and grocery stores. Transport Services began transporting chemicals used to develop photographs in the Fall of 2004. Accordingly, it informed its independent contractors, including Mr. Biggers, that all drivers would be required to be trained on how to properly handle these chemicals.

On November 21, 2004, Mr. Biggers used a substitute driver on his route who had not been trained to handle the photographic chemicals. Accordingly, Transport Services’s lead driver prepared an incident report stating that Mr. Biggers had not provided “sufficient notice” that he was using a substitute driver and that the substitute driver was not properly trained. The lead driver also informed Mr. Biggers that another courier would drive his route on November 22, 2004.

Mr. Biggers ran his regular route on November 22, 2004 despite being told that it had been assigned to another driver. On that same date, the lead driver prepared a second incident report regarding Mr. Biggers. The report stated that Mr. Biggers had commented that he intended to “get in the face” of the person responsible for leaving a note criticizing him. It also stated that Mr. Biggers had been “confrontational” on other occasions and that he had been “unwilling to work with and assist other contractors.”

Mr. Biggers refused to recognize these incident reports and demanded a meeting with Charles Van Cleave, the owner of Transport Services. The owner traveled to Nashville to meet with Mr. Biggers and asked him to explain the two incident reports. Rather than addressing the incident reports, Mr. Biggers insisted that he was an independent contractor and that “reprimands do not affect me one way or the other.” Accordingly, he demanded to know whether he had been fired. The answer was yes.

On December 20, 2004, Mr. Biggers filed a breach of contract action against Transport Services. Mr. Van Cleave, purporting to represent Transport Services, filed an answer on January 21, 2005. Thereafter, Mr. Biggers filed a motion for a default judgment on the ground that Transport Services’s answer was invalid.² When neither Mr. Van Cleave nor Transport Services appeared at the February 25, 2005 hearing on the motion for default judgment, the trial court entered an order on March 23, 2005, granting the default judgment and setting a hearing on damages for April 18, 2005. Transport Services retained counsel and filed an answer and motion to set aside the default judgment on April 14, 2005. Following a hearing on May 6, 2005, the trial court filed an order on May 13, 2005 setting aside the default judgment and permitting Transport Services to file its answer.

²Because Mr. Van Cleave is not an attorney, he could not file answer on behalf of Transport Services. *Old Hickory Eng’s & Mach. Co. v. Henry*, 937 S.W.2d 782, 785 (Tenn. 1996).

Following discovery, Transport Services filed a motion for summary judgment on April 19, 2006, asserting that the undisputed facts demonstrated that it had just cause to terminate Mr. Biggers. Mr. Biggers opposed the motion. The trial court conducted a hearing on June 2, 2006 and filed an order on June 19, 2006, granting the summary judgment on the ground that the undisputed facts showed that Mr. Biggers had breached his duty of loyalty to Transport Services and, therefore, that Transport Services had just cause to terminate Mr. Biggers. Mr. Biggers has appealed.

II.

Mr. Biggers takes issue with the trial court's decision to invoke Tenn. R. Civ. P. 55.02 and 60.02 to set aside the default judgment he obtained against Transport Services. Decisions regarding whether to grant or deny a motion to set aside a default judgment are discretionary. *State ex rel. Jones v. Looper*, 86 S.W.3d 189, 193 (Tenn. Ct. App. 2000). Thus, they must be reviewed using the deferential "abuse of discretion" standard. *Reynolds v. Battles*, 108 S.W.3d 249, 251 (Tenn. Ct. App. 2003). However, a trial court must exercise its discretion by heeding the Tennessee Supreme Court's admonition that Tenn. R. Civ. P. 60.02 should be liberally construed insofar as default judgments are concerned, *Tenn. Dep't of Human Servs. v. Barbee*, 689 S.W.2d 863, 867 (Tenn. 1985), and that a default judgment should be set aside if there is any reasonable doubt as to the justness of granting the default judgment. *Henry v. Goins*, 104 S.W.3d 475, 481 (Tenn. 2003). Based on the evidence in this record, we cannot conclude that the trial court erred by setting aside the default judgment against Transport Services.

III.

Mr. Biggers also insists that the trial court erred by granting Transport Services's motion for summary judgment because the record contains material factual disputes. Not all factual disputes warrant denying a motion for summary judgment. Many factual disputes are relatively minor or have no bearing to the ultimate outcome of the parties' dispute. Thus, factual disputes warrant denying a motion for summary judgment only when they are material. Tenn. R. Civ. P. 56.04 (requiring the moving party to demonstrate "that there is no genuine issue as to any material fact"). A factual dispute is material for the purposes of Tenn. R. Civ. P. 56 if it must be decided in order to resolve the substance of the claim or defense being tested by the summary judgment motion. *Luther v. Compton*, 5 S.W.3d 635, 639 (Tenn. 1999); *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993); *Chambers v. City of Chattanooga*, 71 S.W.3d 281, 284 (Tenn. Ct. App. 2001).

The pivotal issue in this case is whether the undisputed evidence demonstrates that Transport Services had good cause to terminate Mr. Biggers's contract. Employees and independent contractors like Mr. Biggers have a duty to perform reasonably to advance the interests of their employer and to refrain from engaging in any acts that tend to injure the employer's business. *See Biggs v. Reinsman Equestrian Prods., Inc.*, 169 S.W.3d 218, 221 (Tenn. Ct. App. 2004); *Curtis v. Reeves*, 736 S.W.2d 108, 112 (Tenn. Ct. App. 1987). Mr. Biggers's own testimony regarding his conduct on and after November 21, 2004 provides an ample factual basis to conclude that the only conclusion that a reasonable person could draw from the facts is that Transport Services had just cause to terminate Mr. Biggers.

IV.

We affirm the order of June 19, 2006 granting Transport Services, Inc.'s motion for summary judgment and remand the case to the trial court for whatever further proceedings may be required. We tax the costs of this appeal to Steve Biggers and his surety for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.